REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FILSOV SHIPPING COMPANY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3508

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - - x

4/24/87

D E C I S I O N

Petitioner Filsov Shipping Company, Inc., a domestic corporation duly organized in accordance with law, with principal offices at 3rd floor, Mercantile Ins. Bldg., Gen. Luna cor. Beaterio Sts., Intramuros, Manila, and which is the local ship agent of the vessel SS "KAVALEROYD", seeks to vacate the decision of respondent Commissioner of Customs dated June 30, 1982, affirming that of the Collector of Customs of the Port of Manila, imposing an administrative fine of ₱30,000.00 against the said vessel, for violation of Section 1005 of the Tariff and Customs Code in relation to Section 2521 of the same Code.

The facts of the case are substantially related in the decision of the Collector of Customs of the Port of Manila dated June 27, 1980:

> The records obtaining in this case show that the S/S "Heinlaid" loaded on board at Oslo, Norway, various imported cargoes destined for Manila, among which were 3x40' containers said to contain 440 bales of plastic waste and covered by Bill of Lading No. 8318. However, these 440 blaes of plastic waste were transferred to the S/S "Kavaleroyd" which arrived at this Port on June 8, 1977, under Registry No. 1216, and covered by Bill of Lading No. 15. This importation was not properly manifested in the Inward Foreign Manifest of the above-named vessel.
>
> As manifested in the accompanying Bill of Lading No. 15, the gross weight of the shipment was 50,000 kilograms, but as found in the examination by the customs authorities concerned, the gross weight was 59,700 kilograms, which should have been declared in the Manifest of the above-mentioned vessel.
>
> In due time, the respondent (petitioner herein) filed an "Amendment" to the Manifest wherein the gross weight of 59,700 kilograms was specified. The "Amendment" was approved by this Office without prejudice to administrative action against the vessel. The respondent (petitioner) was required to submit an explanation but, finding the registered mail letter dated July 5, 1977 unclaimed by the respondent (petitioner), the case was referred to the Hearing Section, Law Division, for an appropriate hearing.
>
> During the hearing, the government prosecutor dispensed with the presentation of witnesses and relied principally on the above recital of facts and the shipping documents, namely: the "Amendment" to the Manifest of the above-named vessel

(Exh. "A"), the manifested gross weight of 50,000 kilograms appearing under the column "Packages Manifested" (Exh. "A-1"), the actual gross weight of 59,700 kilograms appearing under the column "Should Be" (Exh. "A-2"), the notation which reads "Without prejudice to an administrative action against the subject vessel" appearing in the lower left-hand portion of the "Amendment" to the Manifest (Exh. "A-3"), and the letter dated July 5, 1977 of the Acting Chief, Law Division, addressed to the respondent (petitioner) company.

On the other hand, the respondent (petitioner), thru counsel, presented Documentation Chief Nestor Fernando of the Filsov Shipping Lines who testified that upon computation, he found a discrepancy of 9,700 kilograms between the actual gross weight of 59,700 kilograms and the declared gross weight of 50,000 kilograms; that pursuant to Section 2523 of the Tariff and Customs Code, the 20% of the declared gross weight of 50,000 kilograms is 10,000 kilograms; and that the discrepancy of 9,700 kilograms does not exceed 20% of the gross weight of 50,000 kilograms declared in the manifest.

The respondent's (petitioner's) counsel averred that the above "Amendment" to the Manifest was duly approved by this Office, and that inasmuch as the discrepancy of 9,700 kilograms is less than 20% of the gross weight of 50,000 kilograms declared in the manifest or bill of lading and that the duty and tax due on the shipment have been paid, thereby negating the discrepancy as charged, the instant administrative case should accordingly be dismissed by this Office.

The legal provisions involved in this case are Sections 1005, 2521 and 2523 of the Tariff and Customs Code. Section 1005 lays down the indispensable requirement that every vessel coming from a foreign port must have on board a complete manifest of all her cargo, further stating therein the required contents of each manifest intended to be submitted to the customs authorities. It reads:

> "SEC. 1005. Manifest Required of Vessel From Foreign Port. - Every vessel from a foreign port must have on board a complete manifest of all her cargo.
>
> All of the cargo intended to be landed at a port in the Philippines must be described in separate manifests for each port of call therein. Each manifest shall include the port of departure and the port of delivery with the marks, numbers, quantity and description of the packages and the names of the consignees thereof. Every vessel from a foreign port must have on board complete manifests of passengers and their baggage, in the prescribed form, setting forth their destination and all particulars required by the immigration laws; and every such vessel shall have prepared for presentation to the proper customs official upon arrival in ports of the Philippines a complete list of all sea stores then on board. If the vessel does not carry cargo or passengers the manifest must show that no cargo or passenger, as the case may be, is carried from the port of departure to the port of destination in the Philippines.
>
> A cargo manifest shall in no case be changed or altered after entry of the vessel, except by means of an amendment by the master, consignee or agent thereof, under oath, and attached to the original manifest: Provided, however, That after the invoice and/or entry covering an importation have been received and recorded in the office

> of the appraiser, no amendment ot the manifest shall be allowed, except when it is obvious that a clerical error or any other discrepancy has been committed in the preparation of the manifest, without any fraudulent intent, discovery of which could not have been made until after examination of the importation has been completed."

Both Sections 2521 and 2523 provide for the corresponding penalties in case Section 1005 is violated. Sections 2521 and 2523 provide:

> "SEC. 2521 - Failure to Supply Requisite Manifests, - If any vessel or aircraft enters or departs from a port of entry without submitting the proper manifests to the customs authorities, or shall enter or depart conveying unmanifested cargo other than as stated in the next preceding section hereof, such vessel or aircraft shall be fined an amount not less than ten thousand pesos (₱10,000.00) but not exceeding thirty thousand (₱30,000.00) pesos.
>
> The same fine shall be imposed upon any arriving or departing vessel or aircraft if the master or pilot in command shall fail to deliver or mail to the Commission on Audit a true copy of the manifest of the incoming or outgoing cargo, as required by law. (As amended by P.D. No. 1258-A)"
>
> x x x x x
>
> "SEC. 2523. Discrepancy Between Actual and Declared Weight of Manifested

> Article. - If the gross weight of any article or package described in the manifest exceeds by more than twenty per centum the gross weight as declared in the manifest or bill of lading thereof, and the Collector shall be of opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessel or aircraft, a fine of not more than fifteen per centum of the value of the package or article in respect to which the deficiency exists, may be imposed upon the importing vessel or aircraft."

The basic issue posed for this Court's consideration is - in case the weight of a cargo is inaccurately or incorrectly stated in the manifest, which provision of the Tariff and Customs Code should be applied to the situation, Section 2521 or Section 2523?

Analogous to the case at bar on this point, by reason of the close similarity of the factual settings, exact identity of the legal provisions involved and the issue litigated, is Commissioner of Customs vs. Hon. Court of Tax Appeals, Smith Bell & Co., Inc., in its capacity as Agent of SS "NORMAN", G.R. No. L-41861, March 23, 1987. Because of its decisive effects on the present proceeding, we will therefore resolve this issue in the light of the conclusion reached in the afore-mentioned case, as expressed in the opinion of the Supreme Court there, to wit:

> If the weight of the cargo is in issue, the provision of the Tariff and Customs Code properly applicable is Sec. 2523, not Sec. 2521. A special and specific provision prevails over a general provision irrespective of their relative position in the statute. Generalia specialibus non derogant. Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment. (Manila Railroad Co. vs. Collector of Customs, No. 30264, March 12, 1929, 52 Phil. 950.) It is a principle in statutory construction that where two statutes are of equal theoretical application to a particular case, the one specially designed for said case must prevail over the other. (Wil Wilhemsen, Inc. vs. Baluyut, L-27350-51, May 11, 1978, 83 SCRA 38.)
>
> x x x x x
>
> The said section penalizes the failure to file a proper manifest or when the cargo is unmanifested. In this case a manifest has been filed declaring the weight of the cargo. Although it appears to be underdeclared, this cannot constitute a violation of said Section 2521 of the Tariff and Customs Code since for all legal purposes a proper manifest had been filed covering the cargo. The proper manifest as provided in Section 2521 should be interpreted to mean a complete manifest as provided for in Section 1005

aforecited the pertinent portion of which provides:

> "Each manifest shall include the port of departure and the port of delivery with the marks, numbers, quantity and description of the packages and the names of consignors thereof." (Underscoring supplied)

The law does not even require the weight of the cargo to be specified. Thus, the inclusion of the weight of the cargo in the manifest in a lesser amount than its actual gross weight does not thereby render the manifest incomplete. There is no breach of Section 2521 aforesaid under these circumstances.

The failure to declare the correct weight in the manifest may however be penalized under Section 2523 which precisely contemplates such a situation.

To suggest as petitioner (respondent Commissioner of Customs) contends, that liability can be incurred under both Sections 2521 and 2523 aforestated in the instant case would render nugatory the principle against double jeopardy. (Section 21, Article III, Constitution; Sections 3(h) and 7, Rule 117, Criminal Procedure.)

At this juncture, the question is - can the private respondent (petitioner herein) be held responsible under Section 2523?

This must be answered in the negative.

In order to be liable under Section 2523, two requisites must be satisfied, to wit:

1) the actual gross weight of any article or package described in the manifest exceeds by more than twenty *per centum*

the gross weight as declared in the manifest or bill of lading thereof, and

2) the Collector shall be of opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessel or aircraft.

Both requirements are not present in this case. As found by the Collector of Customs of the port of Manila who heard the case - "Evidently, the discrepancy of 9,700 kilograms does not exceed by more than 20% the declared gross weight of 50,000 kilograms and that the same does not fall within the purview of Section 2523." And indeed as above related, petitioner filed an amendment to the manifest to correct the weight declared which amendment was approved by the Bureau of Customs. It demonstrates the diligence and good faith of petitioner Filsov Shipping Company, Inc. (Commissioner of Customs vs. Hon. Court of Tax Appeals, Smith Bell, Co., Inc. in its capacity as Agent of SS "NORMAN", supra.) Accordingly, petitioner is absolved of the administrative fine of ₱30,000.00 imposed against the vessel S/S "KAVALEROYD."

WHEREFORE, the decision appealed from is hereby reversed. No costs.

SO ORDERED.

Quezon City, Metro Manila, April 24, 1987.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge